

HOWARD ROME MARTIN & RIDLEY LLP
1900 O'FARRELL STREET, SUITE 280
SAN MATEO, CA 94403
TELEPHONE (650) 365-7715

TODD H. MASTER [SBN. 185881]
tmaster@hrmrlaw.com
HOWARD ROME MARTIN & RIDLEY LLP
1900 O'Farrell Street, Suite 280
San Mateo, CA 94403
Telephone: (650) 365-7715
Facsimile: (650) 364-5297

Attorneys for Defendants
CITY OF MENLO PARK and
DAVE BERTINI

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS

**OBJECTION TO PLAINTIFF'S NOTICE
OF MOTION AND MOTION TO
ADVANCE HEARING DATE AND
SHORTEN TIME FOR HEARING ON
MOTION TO CONTINUE TRIAL AND
PRETRIAL DATES [Doc 93]**

TO THE COURT AND ALL COUNSEL:

Defendants CITY OF MENLO PARK and DAVE BERTINI hereby object to Plaintiffs' Notice of Motion and Motion to Advance Hearing Date and Shorten Time for Hearing on Motion to Continue Trial and Pretrial Dates [Doc 93] on the ground that counsel for defendants previously served upon all parties to this case a Notice of Unavailability of Counsel, a true and correct copy of which is attached hereto as Exhibit "A". Said Notice of Unavailability indicates that counsel for

OBJECTION TO PLAINTIFF'S NOTICE OF MOTION AND MOTION TO ADVANCE HEARING DATE AND
SHORTEN TIME FOR HEARING ON MOTION TO CONTINUE TRIAL AND PRETRIAL DATES ;

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defendants would be unavailable for any purpose whatsoever, including but not limited to, receiving notices of any kind, responding to ex parte applications, appearing in court or attending depositions from June 21, 2019 through July 5, 2019.

Counsel for plaintiff has simply ignored defense counsel's Notice of Unavailability. On page 2 at lines 5-6 of his request, plaintiff seeks leave of court to have his Motion to Continue heard on July 8, 2019, the day following defense counsel's return from vacation. In addition, plaintiff requests written oppositions be filed by July 5, 2019, while defense counsel is still on vacation.

Clearly, plaintiff's instant request, if granted, would be prejudicial to defendants. Mr. Master is the only attorney in his office who has familiarity with the case. Given his unavailability, the timetable suggested by plaintiff would preclude Mr. Master from having an opportunity to prepare a written response to plaintiff's motion, and would require his attendance at the hearing the day following his return from vacation.

In the interest of justice, defendants respectfully request the court to deny plaintiff's request for and Order Shortening Time given counsel's unavailability.

Date: June 28, 2019

HOWARD ROME MARTIN & RIDLEY LLP

By

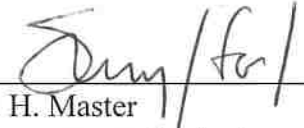

 Todd H. Master
 Attorneys for Defendants
 CITY OF MENLO PARK and
 DAVE BERTINI

EXHIBIT “A”

HOWARD ROME MARTIN & RIDLEY LLP
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Attorneys for Defendants
CITY OF MENLO PARK and
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS

**NOTICE OF UNAVAILABILITY OF
COUNSEL**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on the following dates, Todd H. Master, attorney for
defendants CITY OF MENLO PARK and
DAVE BERTINI will be out of the office and unavailable for any purpose whatsoever, including
but not limited to, receiving notices of any kind, responding to ex parte applications, appearing in
court, or attending depositions:

Commencing June 21, 2019 through July 5, 2019

This notice is given pursuant to the case of Tenderloin Housing Clinic v. Sparks (1992) 8 Cal.App.4th 299. Purposeful scheduling of a conflicting proceeding without good cause during the period of notice is sanctionable conduct pursuant to the Tenderloin case.

Date: June 3, 2019

HOWARD ROME MARTIN & RIDLEY LLP

By: _____


Todd H. Master
Attorneys for Defendants
CITY OF MENLO PARK and
DAVE BERTINI

HOWARD ROME MARTIN & RIDLEY LLP
1900 O'FARRELL STREET, SUITE 280
SAN MATEO, CA 94403
TELEPHONE (650) 365-7715

Michael Zeleny v. Edmund G. Brown, Jr., et al.
United States District Court; Case No. 17-cv-07357-RS

CERTIFICATE OF SERVICE

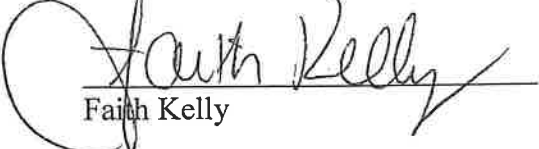
STATE OF CALIFORNIA, COUNTY OF SAN MATEO:

I am a citizen of the United States and employed in the county aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 1900 O'Farrell Street, Suite 280, San Mateo, CA 94403. On the date set forth below I served the **NOTICE OF UNAVAILABILITY OF COUNSEL** on the following person(s) in this action:

David W. Affeld, Esq. Affeld Grivalkes LLP 2049 Century Park East, Suite 2460 Los Angeles, CA 90067 Telephone: (310) 979-8700 Facsimile: (310) 979-8701 Email: dwa@agzlaw.com	ATTORNEYS FOR PLAINTIFF MICHAEL ZELENY
Noreen P. Skelly Deputy Attorney General 1300 I Street, Suite 125 P. O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 210-6057 Facsimile: (916) 324-8835 Email: Noreen.Skelly@doj.ca.gov	ATTORNEYS FOR DEFENDANT ATTORNEY GENERAL XAVIER BECERRA

- ☒ (VIA MAIL -- CCP §§ 1013(a), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the U.S. Postal Service and correspondence placed for collection and mailing would be deposited in the U.S. Postal Service at Redwood City, California, with postage thereon fully prepaid, that same day in the ordinary course of business.
- ☐ (VIA PERSONAL DELIVERY -- CCP §§ 1011, 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and causing each envelope(s) to be hand delivered on that day by _____, in the ordinary course of my firm's business practice.
- ☐ (VIA FACSIMILE -- CCP §§ 1013(e), 2015.5, CRC 2008) By arranging for facsimile transmission from facsimile number 650/364-5297 to the above-listed facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error, and a copy of the transmission report is attached.
- ☐ (VIA OVERNIGHT MAIL/COURIER -- CCP §§ 1013(c), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service or overnight courier service. I am familiar with my firm's business practice of collection and processing of correspondence for overnight mail or overnight courier service, and my correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.

1 I declare that I am employed in the office of a member of the bar of this court at whose
2 direction the service was made. Executed on **June 6, 2019**, at San Mateo, California.

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4 Faith Kelly

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